

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 17390, OR MC 17391, OR MC 21230, OR MC 29795, OR MC 45840, and OR MC 45841.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 21, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where mining claims were located in September and October 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claims or evidence of performance of assessment work on the claims, both in the county where the location notice is of

record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim. For mining claims located in August 1981, the requirement for first recordation of a notice of intention to hold the claim or proof of assessment work performed with the Bureau of Land Management became effective in 1982.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, the conclusive presumption in self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

4. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim: Mining Claims: Abandonment

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining laws has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of location is recorded, and in the proper office of Bureau of Land Management, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Edmund J. Cowan, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Edmund J. Cowan appeals the decision of July 1, 1983, wherein the Oregon State Office, Bureau of Land Management (BLM), declared the unpatented New York and Montana lode mining claims, OR MC 17390 and OR MC 17391, and the September Morning, Lower Shaser No. 1, South Shaser No. 2, North Shaser #5, and Middle Fork Shaser #4 placer mining claims, OR MC 21230, OR MC 29774, OR MC 29795, OR MC 45840, and OR MC 45841, abandoned and void

because no notice of intention to hold the claims or evidence of performance of annual assessment work on the claims was filed with BLM in 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The New York and Montana claims were located in 1931, and were recorded with BLM August 2, 1979. The September Morning, Shaser No. 1, and South Fork Shaser No. 2 were located in September and October 1979. The North Shaser #5 and the Middle Fork Shaser #4 claims were located in August 1981. Each claim was timely recorded with BLM.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on Federal land file with the proper office of BLM and in the office where the location notice is recorded each year prior to December 31, a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the New York and Montana lode mining claims for 1981 was filed with BLM by December 30, 1981, BLM properly deemed the claims to be abandoned and void. J. & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. When Congress enacted FLPMA, it gave neither the Secretary of the Interior nor this Board authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days after location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file for record in the county office where the location notice is recorded and in the proper office of BLM evidence of assessment work performed on the claim or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982); Francis Skaw, 63 IBLA 235 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences. Francis Skaw, *supra*; Lynn Keith, *supra*.

As the North Shaser #5 and the Middle Fork Shaser #4 were located in August 1981, the first recordation of a proof of labor or notice of intention to hold the claims was due in 1982, not 1981 as the BLM decision held.

Accordingly, the BLM decision will be modified to eliminate the North Shaser #5 and the Middle Fork Shaser #4 from the holding that these claims are deemed abandoned and void because no proof of labor or notice of intention to hold was filed with BLM in 1981.

[3] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellant's argument that the intent not to abandon was manifest, we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford the claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * Appellant also argues that the intention not to abandon these claims was apparent, saying, in essence, that the act of filing the certificates of location for record in BLM and the payment of recording fees on the last day on which notices of intention to hold, or evidence of assessment work could be submitted, clearly indicated that the claims were not abandoned. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

Although appellant states the proofs of labor were properly mailed to BLM, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if a timely mailed instrument was prevented by Postal Service error from reaching the BLM office, that fact would not excuse the claimant's failure to comply with regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his

documents. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, *supra*. Filing is accomplished only when a document is received by and date stamped by BLM. Merely placing a document in the mail does not constitute filing. 43 CFR 1821.2-2(f).

BLM has stated that it did not receive the 1981 proofs of labor for these claims. Appellant has not shown anything to the contrary, stating only that the documents were mailed. Therefore, it must be found that BLM was not acting improperly in its decision declaring the New York and Montana lode mining claims and the September Morning, Lower Shaser No. 1, and South Shaser No. 2 placer mining claims abandoned and void under the terms of FLPMA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, with the modification that the North Shaser #5 and the Middle Fork Shaser #4 are deleted from the claims deemed to be abandoned.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

